

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARRELL ONEIL BUCKNER,

Plaintiff,

v.

SACRAMENTO POLICE
DEPARTMENT, et al.,

Defendants.

No. 2:23-cv-01723-TLN-EFB (PC)

ORDER

Plaintiff, a county jail inmate proceeding without counsel, commenced this action on August 14, 2023. ECF No. 1. On September 5, 2023, plaintiff filed a second complaint, which the court construes as an amended complaint superseding the original complaint. ECF No. 7. Plaintiff has also filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and a request for the appointment of counsel. ECF Nos. 8 & 9. The court will grant the in forma pauperis application and screen the amended complaint. For the reasons set forth below, the request to appoint counsel will be denied.

Leave to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)). While the complaint must comply with the “short and plain statement” requirements of Rule 8, its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at 678.

Furthermore, a claim upon which the court can grant relief must have facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

////

Screening Order

While plaintiff named four defendants in his original complaint, the amended complaint does not name any defendants. ECF No. 7 at 1-2. Moreover, the prisoner civil rights complaint form has been left blank as to claims, causes of action, administrative remedies, and relief sought. *Id.* at 3-6. Instead of filling out the form, plaintiff has attached numerous pages of documents that do not indicate who he is suing or on what grounds. *Id.* at 7-65.

Plaintiff's complaint cannot survive screening because it violates Federal Rule of Civil Procedure 8. A sufficiently plead complaint under Rule 8 must "put defendants fairly on notice of the claims against them." *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991). The amended complaint neither names any defendants nor makes clear what claims plaintiff is seeking to bring against them. Nor does it contain a short and plain statement of specific allegations.

Further, the court notes that a claim is frivolous "when the facts alleged arise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." *Denton v. Hernandez*, 504 U.S. 25, 33 (1992); *see also Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (holding that "§ 1915(d)'s term 'frivolous,' when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation."). In the absence of factual or legal support for any claim, plaintiff's complaint appears on its face to be frivolous.

Based on the foregoing, the court will dismiss plaintiff's complaint. In an abundance of caution, plaintiff will be given the opportunity to amend his complaint to cure the deficiencies identified herein.

Leave to Amend

Plaintiff may choose to amend his complaint. He is cautioned that any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of his constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also include any allegations based on state law that are so

1 closely related to his federal allegations that “they form the same case or controversy.” *See* 28
2 U.S.C. § 1367(a).

3 The amended complaint must also contain a caption including the names of all defendants.
4 Fed. R. Civ. P. 10(a).

5 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*
6 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Nor may he bring unrelated claims against
7 multiple defendants. *Id.*

8 Any amended complaint must be written or typed so that it so that it is complete in itself
9 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
10 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
11 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
12 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
13 being treated thereafter as non-existent.”) (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
14 1967)).

15 Any amended complaint should be as concise as possible in fulfilling the above
16 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual
17 background which has no bearing on his legal claims. He should also take pains to ensure that his
18 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing
19 and organization. Plaintiff should carefully consider whether each of the defendants he names
20 actually had involvement in the constitutional violations he alleges. A “scattershot” approach in
21 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

22 Motion to Appoint Counsel

23 Plaintiff requests that the court appoint counsel. District courts lack authority to require
24 counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist.*
25 *Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney
26 to voluntarily to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935
27 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
28 When determining whether “exceptional circumstances” exist, the court must consider the

1 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro
2 se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970
3 (9th Cir. 2009). As plaintiff has not filed a viable complaint, the court finds no exceptional
4 circumstances in this case.

5 Conclusion

6 Accordingly, it is ORDERED that:

- 7 1. Plaintiff's application to proceed in forma pauperis (ECF No. 8) is GRANTED;
- 8 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
9 in accordance with the notice to the Rio Consumnes Correctional Center filed concurrently
10 herewith;
- 11 3. Plaintiff's amended complaint (ECF No. 7) is dismissed with leave to amend
12 within 30 days of service of this order;
- 13 4. Plaintiff's motion to appoint counsel (ECF No. 9) is denied; and
- 14 5. Failure to comply with this order may result in dismissal of this action.

15
16 Dated: November 27, 2023

17 
18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25
26
27
28